No. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v.

THE SUPREME COURT OF THE STATE OF IOWA,
W.W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA,
THE BOARD OF LAW EXAMINERS,
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS, APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IOWA

SUPPLEMENT TO JURISDICTIONAL STATEMENT

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SUPPLEMENT TO JURISDICTIONAL STATEMENT

STATEMENT OF FACTS

Appellees place reliance on the Iowa Supreme Court unpublished order of Foytack-Kelly in denying further waivers of the ABA law school graduation requirement (Motion to Dismiss, p.9) and state Appellant should have inquired

regarding the policy of limiting bar examination entrance to graduates of ABA-approved law schools. On March 10, 1983, the Assistant Supreme Court clerk, John Bruntz, accepted Appellants' application and stated "there should be no problem since your school is accredited by many other agencies." The Foytack-Kelly order filed 4-9-81 was not mentioned. The Iowa Board of Law Examiners cited Rule 106 as authority for its denial of Appellants' entrance, not mentioning the Foytack-Kelly order. On May 2, 1983, the Executive Assistant to the Chief Justice of the Iowa Supreme Court, Paul Wieck III, inquired of the Supreme Court clerk, Keith Richardson, in the presence of Appellant's attorney, Gary Robinson, as to the Courts' policy of admission, and again, the Foytack-Kelly order was not disclosed. In the Iowa Supreme Court order of denial dated May 17, 1983,(Appellant's App. 'A' in Juris. Statement), the court relied on Rule 106 with no mention of the order or the policy regard-

ing non-ABA law school graduates. For the first time, in Appellees Motion to Dismiss, the unpublished order is brought to light to thwart the efforts of Appellant to sit for the Iowa bar.

I The Foytack-Kelly order Does Not Apply to This Appellant.

> "An order of the court does not bind persons who are not parties or privies to the proceeding." 60 CJS, Motions & Orders, §65, p.112.

Appellant was neither a party to or in privity with the persons in the prior proceeding. Since he had no opportunity to resist the order, it is not binding upon him.

> "There is no power in any court to order one who does not have the opportunity to resist the making of the order." Hall v. Wilson, 35 F.2d 189, 192 (1929).

The terms of the statute two years after the order was dated were incompatible with the order and the Iowa Supreme Court can not show an intent to discontinue the dispensation of waivers where the order was not incorporated into a statutory change and no notice was given Appelant, nor was a hearing given on the merits.

"One decision construing an act does not approach the dignity of a well settled interpretation." U.S. v. Raynor, 302 U.S. 552 (1938).

Prior interpretations of Rule 106 permitted Western State graduates entrance to the Iowa bar. The Foytack-Kelly order, absent a change in the Rule to reflect the intent of the Court, is of no effect on Appellants' application. The longstanding administrative construction is entitled to great weight, particularly where the wording of the statute is not changed. (See Saxbe v. Buston, 419 U.S. 72 1974).

II Appellees Can Not Rely on an Implied Amendment Theory.

Appellees infer that Rule 106 has been amended by the Foytack-Kelly order. In Galvan v. Hess Oil Virgin Islands Corp. 549 F.2d 281, 288 (1977), it is stated:

"Our first consideration - is a presumption against amendments by implication. If the legislature has not amended a statute, it is only in the rarest case that a court should rule the statute amended. (See e.g. U.S. v. Welden, 377 U.S. 95, 102 n12 (1964), amendment by implication not favored). To do so is to rule that a statute does not mean what it plainly says."

When Appellant applied, the statute plainly provided for a determination by the Iowa Court of "reputable" law schools. In its application, the Court permitted waivers of Rule 106, allowing non-ABA graduates to its bar. The fact that the Foytack-Kelly order is not published indicates no hearing on the merits was held, and no published change to the Rule resulted therefrom. Notwithstanding four occasions when the Iowa court or its officers had a duty to disclose the order, they declined to do so. Administrative policies affecting individual rights and obligations must be published so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations. (See Morton v. Ruiz, 415 U.S. 223, 232; Anderson v. Butz, 550 F.2d 459, 463; Hotch v. U.S., 212 F.2d 280, 284). It can hardly be said that Appellant should have known of the Court's prior ruling. As the dispensation of waivers is provided for under Rule 106 as applied by prior determinations of the Court, Appellant, having applied when the rule read the same, maintains his claim of

right to admission to the Iowa bar by way of examination. The designation of Western State as not being "reputable" is not new to the Iowa court. On January 3, 1977, Western State graduate Gary Robinson was advised it was not "reputable" under the Rule (App. G). On March 28, 1977, the school was advised it was not "reputable" under Rule 106 (App. H). Neither of these resulted in changes to the Rule. However, the next day, on March 29, 1977, Robinson, who did not apply for a waiver, was permitted entrance to the exam (App. I). Both Don Somerville and John Hunt, Western graduates, were permitted entrance to the bar in 1978. In 1979, Thomas Hanrahan, a Western graduate, sat for the Iowa bar. To therefore rely on the "recently discovered" Foytack-Kelly order to keep Appellant out has no basis where previous application of the rule permitted Western graduates entrance, notwithstanding a prior designation of the school not being reputable. The only change has been the arbitrary dispensation of waivers. The Iowa court retained, and still

has, under the June 1983 amendment, authority to admit non-ABA graduates to its bar where an application was filed before the change became effective. The Rule as amended is tailored to permit Appellant entrance to the Iowa bar examination.

II Iowa Court Rule 106 Has Been Amended Effective June 13, 1983

On March 10, 1983, Appellant filed to sit for the Iowa bar exam. The Board's denial of April 13, 1983, cited Rule 106 as authority. Appellant filed Federal Constitutional challenges to the Rule in the appeal to the Iowa Supreme Court of May 2, 1983. The Court entered a denial on May 12, 1983 using 106 as authority. On June 13, 1983, Rule 106 was amended to remove discretion from the Iowa Court to find any law school "reputable", placing sole authority for admission in the ABA (App. J). It is no coincidence that Iowa has now revised the Rule. The language which Appellant attacked as being subject to vague interpretation and arbitrary application has been stricken

from the statute. This is evidence of knowledge that the rule violated Appellant's Federal Constitutional guarantees, and is a measure, remedial in nature, to conform the statute to U.S. Constitutional requirements. In Brown v. Board of Law Examiners of the State of Nev. 623 F.2d 605, 610 (1980), the court stated:

> "Where the dispensation of waivers were in fact arbitrary and capricious, the appropriate remedy would be to eliminate the Constitutional violation by changing the relevant administrative procedures."

Appellant has shown the dispensation of waivers were arbitrary and capricious. The Iowa Court has now rendered the appropriate remedy by publishing changes to the Rule which Appellant challenged as being in violation of the Federal Constitution.

> "Until lawfully changed, the administrative practice (of granting waivers) must stand as a lawful interpretation of the statute." (U.S. v. Zenith Radio Corp. 562 F.2d 1209, 1223 1977).

The fact that Rule 106 was changed only in response to a U.S. Constitutional challenge evidences an intent on the part of Appellees

to heretofore retain discretionary authority to allow for waivers for non-ABA graduates. It should be noted that the amended rule, by its wording, does not apply to Appellant as he has previously applied to take the Iowa bar examination.

CONCLUSION

Appellees position is inconsistent with their actions. They defend the Constitutional challenge Appellant has mounted to Court Rule 106 and rely on a court order which has no effect on Appellant's case. They then institute the very changes to sections of the statute which Appellant claims are in violation of Federal Constitutional mandates. Appellees further provide that the new statute requiring graduation from an ABA law school does not apply to Appellant since his application was on file before the rule was amended.

It is respectfully submitted that such inconsistencies demand the noting of jurisdiction and a hearing on the merits.

By 
Gary A. Robinson,
Attorney for Appellant
4717 Grand Avenue
Des Moines, IA 50312
(515) 274-2345

January 3, 1977

Dear Mr. Robinson,

Please be advised that on October 13, 1976, the Iowa Supreme Court refused to define Western State University College of Law of San Diego, California, as a "reputable" law school pursuant to Court Rule 106.

Therefore, you would not be permitted to take the Iowa bar examination as a graduate of Western State University, as it is not accredited and approved by the American Bar Association or the Iowa Supreme Court.

Sincerely,

/s/
R.K. Richardson
Clerk of Supreme Court

Appendix 'G'

Supplement to Jurisdictional Statement

March 28, 1977

John W. Black
Ass't Dean
Western State University
College of Law
1111 N. State College Blvd.
Fullerton, CA 92631

Dear Mr. Black,

The application of Western State University College of Law for approval under Court Rule 106 as a law school whose graduates may sit for the Iowa Bar Examination has been considered by this Court and denied.

Sincerely,

/s/
C. Edwin Moore
Chief Justice

Appendix 'H'

Supplement to Jurisdictional Statement

March 29, 1977

RE: June 1977 Iowa Bar Examination

Dear Mr. Robinson,

Your petition for waiver of the requirement of graduating from a "reputable law school" as defined in Rule 106 has been reviewed by this court which has determined that the petition should be and hereby is granted.

Sincerely,

/s/
C. Edwin Moore
Chief Justice

Appendix 'I'

Supplement to Jurisdictional Statement

IN THE SUPREME COURT OF IOWA

ORDER

IN RE AMENDMENT OF IOWA SUPREME COURT RULE 106

Pursuant to action by this court en banc, Iowa Supreme Court Rule 106 is hereby amended, effective upon the filing of this order, as follows:

Court Rule 106. No person shall be permitted to take the examination for admission without proof that he has received the degree of LL.B. or J.D. from a reputable law school fully approved by the American Bar Association; provided, however, that a student in such a reputable law school who expects to receive the degree of LL.B. or J.D. within seventy-five days from the first day of the June or January examination shall be permitted to take such examination upon the filing of an affidavit by the dean of said school stating that he expects such student to receive such degree within said time. The requirement of such affidavit is in addition to the other requirements of statute or court rule. No certificate of admission to practice law shall be issued until the applicant has received the required degree.

~~A law school fully approved by the American Bar Association or the Iowa Supreme Court shall be deemed a reputable school.~~

This amendment shall apply to persons who have not previously applied to take an Iowa Bar Examinaiton or been previously granted a waiver of the requirements of Court Rule 106.

Dated this 13th day of June, 1983.

THE SUPREME COURT OF IOWA

/s/ W.W. Reynoldson, Chief Justice

Appendix 'J'

Supplement to Jurisdictional Statement

PROOF OF SERVICE

I, Gary A. Robinson. counsel of record for Jonathon Earl Logan, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of September, 1983, I served three copies of the Supplement to Jurisdictional Statement on each of the parties thereto as follows:

1. On the Supreme Court of the State of Iowa, W.W. Reynoldson. Chief Justice by mailing three copies to K.R. Richardson Clerk of the Supreme Court, Iowa State Capitol Building, Des Moines, IA

2. On the Iowa Board of Law Examiners by mailing three copies to Maurice B. Nieland, 300 Toy National Bank Building, Sioux City, IA 51101.

3. On the Attorney General of the State of Iowa, Brent R. Appel, Deputy, by mailing three copies to Attorney General of Iowa, Hoover State Office Building, Des Moines, IA 50319.

By 
Gary A. Robinson
Attorney for Appellant